HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 358 of 2001

Manwar Singh Rawat

Vs.

The Additional Director (consumers)
U.P. Cooperative Societies, Lucknow
and others.

Approved for reporting.

Not approved for reporting

Date of decision 8.7.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 358 of 2001

Manwar Singh Rawat ..... Petitioner

Versus

The Additional Director (Consumers)
U.P. Cooperative Societies, Lucknow and
Others ..... Respondents

Sri V.B.S. Negi, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: July 8, 2004

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioner has prayed for the issue of a writ of certiorari quashing the termination order dated 14th May 1985, annexure-2 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that the petitioner was appointed by the Committee of Management of the District Cooperative Development Federation Ltd. as Salesman on 22nd September 1975. Thereafter the petitioner was promoted to the post of Depot Incharge and the petitioner was working as a permanent employee on the post of Depot Incharge. The petitioner has stated that his services are governed under the U.P. Cooperative Service Regulations, 1975. He has submitted that he was performing his duties without any break and was also getting annual increments. The petitioner while working at Bironkhal as Depot Incharge, there was certain shortage in the stock and the petitioner was asked to pay Rs.18,352.50. He made

representation against the said recovery but the respondents did not hold any enquiry and held the petitioner responsible for shortage in the food grains. The petitioner has submitted that he has received a letter dated 14th May 1985 in the last week of June 1985, in which it was mentioned that pursuant to the letter of the Additional Registrar (Consumers), U.P. Cooperative Socoeties, Lucknow, dated 22.4. 1985 regarding retrenchment of some employees, the petitioner's services were terminated w.e.f. 15th May 1985. It was further mentioned that the petitioner disobeyed the order of the Society as he was asked to deposit Rs.18,352.50. The petitioner has submitted that he is a confirmed employee and his services his services have been terminated on the ground of retrenchment, however several employees junior to him are still in service. It has been stated that no proceedings were taken under section 25-FF and Section 6-N of the Industrial Dispute Act, and as such the termination of the petitioner is wholly illegal.

A perusal of termination order dated 14.5.85, annexure-2 to the writ petition shows that retrenchment of the petitioner was made in pursuant to the meeting of Additional Registrar (Consumers) Lucknow and therefore the services of the petitioner were terminated. Further it was mentioned that the termination of the petitioner was done due to misappropriation of Rs.18,352,50 by him.

Admittedly the petitioner was Depot Incharge of District Cooperative Development Federation Ltd. Pauri Garhwal. Admittedly order of termination of services of the petitioner has been passed under Regulation no.84 of U.P. Co-operative

Societies Employees Service Regulations, 1975. Under Regulation No. 86 and 87 of the said Regulations there is provision of appeal against such order. Regulation 86 and 87 reads as under:

86.Appeal:- *Order imposing penalty under sub-clauses (a) to (d) of clause (1) of Regulation no. 84 shall be appealable to the authorities as mentioned in Appendix 'D'.*

87. *Order imposting penalty under sub-class (e) to (g) of clause (1) of Regulation no. 84 shall not be passed except with the prior concurrence of the Board.*

Thus it is clear that there is no provision of appeal for the order passed under sub clauses (e) to (g) of clause (1) of Regulation No. 84. Sub clauses (e) to (g) of clause (1) of Regulation 84 provides as under:

(e) reduction of rank or grade held substantively by the employee,

(f) removal from service, or

(g) dismissal from service.

Thus the penalty of removal from service awarded against the petitioner comes under Sub clause (1) (e) of Regulation 84 which is not an appealable order.

The contention of the petitioner is that the order of removal from service passed by the respondents is against the principles of natural justice. No charge sheet was given to the petitioner. Sub Clause (iv) of Regulation 84 provides as under:

The charge-sheeted employee shall be awarded punishment by the appropriate authority according to the seriousness of the offence:

Provided that no penalty under sub clauses (e), (f) or (g) of clause (i) shall be imposed without recourse to disciplinary proceedings.

Disciplinary proceedings have been detailed under Regulation 85. It has been provided under Regulation 85 that while conducting inquiry against an employee principles of natural justice should be observed.

The petitioner has stated that he was a permanent employee of the Cooperative Society. Even if the petitioner was a temporary employee he was entitled to be heard before any order for termination was passed. No opportunity was given to the petitioner for being heard before passing the order against him. The order, therefore, was passed by the respondent no.2 in utter violation of the principles of natural justice.

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Lt; (1993) 3 SCC 259 has held as under:

"It is a fundamental rule of law that no decision just be taken which will affect the right of any person without fist being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country…… they

include..... rights capable of being enforced or redressed in a civil action.....In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence is support thereof supplied and must be given a fair opportunity to meet the case before and adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.

In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven Judges Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent

fundamental rights of citizens, must taken care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in away, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

In view of the discussion made above the order dated 14.4.1985 has been passed by the respondent no.2 without complying the mandatory provisions of U.P. Cooperative Societies Employees Service regulations, 1975 and principles of natural justice. Thus the order of termination of the services of the petitioner cannot be sustained.

Consequently, the writ petition is allowed. Order dated 14.4.1985 passed by the respondent no.2 terminating the services of the petitioner is hereby quashed. The petitioner is reinstated on his post. No order as to costs.

(Rajesh Tandon J.)

July 8, 2004
*Dhyani